



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

**General Counsel**

1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

August 13, 2007

Marlene H. Dortch  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW -A325  
Washington, D.C. 20554

Re: WP Docket No. 07-100

Dear Ms. Dortch:

Pursuant to the Notice of Proposed Rulemaking and Order released May 14, 2007 in the above-referenced proceeding, enclosed are the Comments of the United States Department of Transportation in this matter. Please contact me if you have any questions.

A handwritten signature in black ink, reading "Paul Samuel Smith".

PAUL SAMUEL SMITH  
Senior Trial Attorney

(202) 366-9280

Enclosure

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Part 90	)	WP Docket No. 07-100
of the Commission's Rules	)	
	)	

**Comments of the  
United States Department of Transportation**

Introduction

The Federal Communications Commission ("FCC" or "Commission") in this proceeding has proposed or sought comment on various changes to rules governing wireless communications equipment and use. Notice of Proposed Rulemaking and Order, WP Dkt. No. 07-100, FCC 07-85 (released May 14, 2007) ("NPRM&O"). Of particular interest to the United States Department of Transportation ("DOT" or "Department") is the prospect that private sector entities operating metropolitan transit systems and toll facilities might, like their public sector counterparts, be allowed to use frequencies in the Public Safety bands. NPRM&O at ¶¶ 12 – 13; 14 C.F.R. Part 90 Subpart B.

Whether in the public or private sector, these entities provide the same basic transportation infrastructure and services and bear the same basic responsibilities for safe and reliable transport. To carry out their obligations they have the same need to communicate with police and fire departments and other public safety agencies. The Department therefore urges the FCC to permit privately run transit systems and toll facilities to use the spectrum assigned to the Public Safety Pool for public safety-related communications.

## Discussion

The Commission's inquiry dovetails with the growing interest in public-private partnerships ("PPPs") to plan, finance, build, and/or operate portions of the nation's transportation infrastructure. Just as the radio spectrum evidences ever-growing demand, so, too, do our roadways, transit systems, and other transport facilities. In the wireless telecommunications industry, increased reliance on the marketplace has served to address the imbalance of available supply and demand, spur technological advances, stimulate new services, and meet consumer needs. *See, e.g.*, section 6002 of the Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, 107 Stat. 387; and section 3002 of Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 258.

Similarly, federal, state, and local governments have turned to the private sector for the expertise, efficiencies, and incentives it offers to assist them in providing, maintaining, and operating critical transportation infrastructure. For example, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. Law No. 109-59, 119 Stat. 1144 ("SAFETEA-LU") allows public funds to be leveraged with private investment (through private activity bonds and other innovative financing programs), increases contracting flexibility, and enhances the authority to use tolls. Current federal policy encourages state and local governments to explore PPPs in the transportation field. PPP projects have become a common mechanism all over the world for reducing taxpayer financial risk and for improving incentives for superior operating performance and efficient investment.<sup>1</sup>

The Commission has correctly observed that the role played and services offered by private sector operators of public transit systems are indistinguishable from their traditional public sector counterparts. NPRM&O at ¶ 12. The FCC also has asked whether the same is true of private entities that lease or operate toll roads. Id. at ¶ 13. It is indeed, for such shared functionality is a hallmark of PPPs generally: Both public and private agencies provide, maintain, and/or operate basic transport infrastructure and

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<sup>1/</sup> Examples of PPPs are the Dulles Greenway (a toll road franchise), the Chicago Skyway (a long-term lease) and the Central Texas Turnpike System/State Highway 130 (a comprehensive design-build arrangement). DOT's Federal Highway Administration maintains a website that offers much more detailed information on PPPs: <http://www.fhwa.dot.gov/ppp/index.htm>

services (such as a roadway or a passenger bus network). More importantly for present purposes, both bear the same responsibility to provide for the safety of the traveling public.<sup>2</sup>

These shared purposes and functions include the regular need to communicate with providers of public safety services like police and fire departments, emergency medical services, and the like. Much of the time this communication occurs via landline or cellular telephone or some other electronic medium. Particularly in emergencies, however, and to coordinate multiple services at the scene of an accident or disaster, communication between the transit or toll facility operator on the one hand and public safety service providers on the other may take place most effectively via the frequencies devoted to public safety. In such circumstances the public or private sector origin of the operator of the affected infrastructure is immaterial.<sup>3</sup>

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<sup>2</sup>/ PPP agreements commonly include provisions requiring the private operators to provide or ensure substantially equivalent public safety services as are available on comparable public facilities. In fact, this obligation is often met by using the same public safety service agencies -- state and local police, local (professional and volunteer) fire departments, public and private emergency medical transport -- that provide services on the publicly owned and operated infrastructure.

<sup>3</sup>/ Congress and the FCC have recognized as much in a related context. Public safety agencies not only have frequencies set aside for their use, but neither they nor government units pay for that spectrum. By contrast, private sector access to spectrum now generally takes place via the auction process. Yet Congress and the Commission have exempted from auction the private radio services used by private ambulance services and volunteer fire departments because "the services they perform supplement or, in some areas, replace traditional public safety functions ordinarily provided by local governments." In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, WT Docket No. 99-87, Report and Order, 15 FCC Rcd. 22709, 22746 at ¶ 75 (2000). Moreover, transit systems and some private entities such as railroads enjoy this same exemption when they maintain an infrastructure that provides "essential public services" and when reliable communications systems are necessary "to prevent or respond to a disaster or crisis affecting the public at large." Id. at ¶ 77.

Conclusion

The Department supports amending the Commission's rules to allow private sector operators of transit systems and toll facilities (roads, bridges, tunnels, etc.) to use the frequencies in the Public Safety Pool for public safety purposes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D.J. Gribbin', with a stylized flourish at the end.

D.J. GRIBBIN  
General Counsel

August 13, 2007